

## BYLAWS

### CITY OF HOUSTON INDUSTRIAL DEVELOPMENT CORPORATION

#### ARTICLE I

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#### POWERS AND PURPOSES

~~Section 1.~~ Section 1. Financing Powers. In order to implement the purposes for which the Corporation was formed as set forth in the Articles of Incorporation, the Corporation may issue revenue bonds, notes or other obligations or securities for any of the purposes set forth in the Development Corporation Act of 1979, Article 5190.6, Vernon's Annotated Texas Civil Statutes, Chapter 501, Texas Local Government Code, as amended (the "Act"). The Corporation shall, in addition, have those rights and powers as enumerated in that Act.

~~Section 2.~~ Section 2. Conditions Precedent to Issuance of Obligations. The Corporation shall not issue any bonds, notes or other obligations, including those for refunding purposes, unless the City Council ("unless;

(1) the sponsoring entity's governing body (the "City Council") of the City of Houston, Texas (the "City of Houston") has approved by ordinance or resolution, adopted no more than sixty (60) days prior to the date of delivery of the bonds, notes or other obligations, specifically approving the resolution of the Corporation providing~~provide~~ for the issuance of the obligations; and

(2) the Office of the Governor of the State of Texas, Economic Development and Tourism Division, or the executive director thereof, has approved the contents of any lease, sale or loan agreement made by the Corporation under the Act in connection with the issuance of obligations.

~~Section 3.~~ Section 3. Books and Records; Approval of Programs and Financial Statements. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors of the Corporation (the "~~Board of Director~~") "Board of Directors") and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any director or his agent or attorney for any proper purpose at any reasonable time; and at all times the City Council will have access to the books and records of the Corporation. The City of Houston shall be entitled to review all programs ~~and~~ expenditures and any financial statements of the Corporation.

~~Section 4.~~ Section 4. Nonprofit Corporation. The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of ~~the~~ expenses, bonds or other obligations shall inure to the benefit of any private individual, firm or corporation, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City of Houston.

Section 5. Effect of Articles of Incorporation and Ordinance. The affairs of the Corporation shall at all times be conducted in a manner subject to and in compliance with the provisions and requirements of the Articles of Incorporation of the Corporation and the Ordinance of the City ordering its creation.

**ARTICLE II**  
**ARTICLE II**  
**BOARD OF DIRECTORS**

~~Section 1.~~ Section 1. Powers, Number and Term of Office. The property and affairs of the Corporation shall be managed and controlled by the Board of Directors and, subject to restrictions imposed by law, the Articles of incorporationincorporation and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

~~There shall be an interim Board of Directors consisting of the three initial directors named in the articles of incorporation, each of whom shall serve for a period not to exceed 90 days from the date of their approval by the City Council or until his or her successor is appointed as hereinafter provided.~~

~~The permanent Board of Directors shall consist of nine (9) Directors~~directors, each of whom shall be appointednominated by the Mayor and confirmed by City Council.

The directors constituting the first Board of Directors shall be those directors named in the Articles of Incorporation. Each director appointed to the Board of Directors shall be appointed to a designated and numbered position on the Board. The term of office for the uneven numbered positions will expire on the first day of January, 2005, and thereafter the terms of appointees to such uneven numbered positions will expire on the first day of January of every uneven numbered year. The term of the first appointees to the even numbered positions on the Board will expire on the first day of January, 2006 and thereafter the terms of appointees to the even numbered positions will expire on the first day of January of every even numbered year, each of whom shall serve for three (3) years. Each director will hold office for the duration of the term for which he is appointed and until his or her successor is nominated by the Mayor and confirmed by the Governing BodyCity Council. No officer or employee of the City- is eligible for appointment as a director.

Any director may be removed for office, by the City Council, for cause or at will from office at any time, with or without cause, by ordinance of the Governing Body of the City. All vacancies, from whatever cause, shall be filled by nomination of the Mayor and confirmation by the City Council.

~~Section 2.~~ Section 2. Meetings of Directors. The directors~~Board of Directors~~ may hold theirits meetings at such place or places ~~in~~in the State of Texas (the "State"), as the Board of Directors may from time to time ~~determine~~designate; provided, however, in the absence of any such ~~determination~~designation by the Board of Directors, the meetings shall be held at the registered office of the Corporation in the State.

~~Section 3.~~ Section 3. Regular and Special Meetings. Meetings of the Board of Directors shall be held pursuant to notice posted consistent with Article V hereof which shall designate ~~at~~ such time and places as shall be designated, from time to time, by resolution of the Board of Directors.

~~Section 4.~~ Public Hearings. Public hearings required under Section 147(f) of the Internal Revenue Code of 1986, as amended, may be called and conducted by any officer, director or designee of the Corporation as may be designated in writing by the President of the Corporation, and such officer, director or designee may establish the date, place and time of the hearing and may give notice of the hearing.

~~Section 4.~~ Section 5. Quorum. A majority of the ~~directors~~ Board of Directors fixed by the Articles of Incorporation shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. The act of a majority of the ~~directors~~ Board of Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors, unless the act of a greater number is required by law.

~~Section 5.~~ Section 6. Conduct of Business. At the ~~meeting~~ meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the ~~president~~ President shall preside, and in the absence of the ~~president~~ President, the ~~vice president~~ Vice President shall exercise the powers of the ~~president~~ President.

The ~~secretary~~ Secretary of the Corporation shall act as ~~secretary~~ Secretary of all meetings of the Board of Directors, but in the absence of the ~~secretary~~ Secretary, the presiding officer, subject to Article III, Section 1, may appoint any person to act as ~~secretary~~ Secretary of the meeting.

~~Section 6.~~ Section 7. Executive Committee. The Board of Directors, by resolution passed by a majority of the directors in office, may designate two or more of the directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have ~~any~~ and may exercise all of the authority of the Board of Directors in the management of the Corporation, except where action of the Board of Directors is specified by law. The executive committee shall act in the manner provided in such resolution. The executive committee ~~shall act in the manner provided in such resolution.~~ The executive committee so designated shall keep regular minutes of the transactions of its meetings ~~and~~, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board of ~~Director~~ Directors from time to time.

The majority of the Board of Directors in office may delegate authority to an officer who shall be authorized, empowered and directed from time to time and at any time to do and perform the execution of documents and other acts and things as necessary for the administration of the Corporation.

~~Section 7.~~ Section 8. Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they ~~shall~~ may be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

**ARTICLE III**  
**ARTICLE III**  
**OFFICERS**

~~Section 1.~~ Section 1. Titles and Term of Office. The officers of the Corporation shall be a president, a vice president, and a secretary President, a Vice President, Treasurer, and a Secretary, and such other officers as the Board of Directors may from time to time elect or appoint. One person may hold more than one office, except that the ~~president~~ President shall not hold the office of the ~~secretary~~ Secretary.

All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the entire Board of Directors.

A vacancy in the office of any officer shall be filled by a vote of a majority of the ~~directors~~ Board of Directors.

~~Section 2.~~ Section 2. Powers and Duties of the President. The ~~president~~ President shall be the chief executive officer of the Corporation and a member of the Board of Directors and, subject to the approval of the Board of Directors, ~~he~~ The President shall be in general charge of the properties and affairs of the Corporation; ~~he shall preside at all meetings of the Board of Directors; at which he is present and sign all resolutions passed at those meetings.~~ In furtherance of the purposes of the Corporation, ~~he~~ the President may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments ~~in~~ in the name of the Corporation, ~~except where required or permitted by law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Directors of the Corporation to some other officer or agent of the Corporation. In the absence of the Secretary, any officer other than the President may act in the Secretary's place.~~

~~Section 3.~~ Section 3. Vice President. The ~~vice president~~ Vice President shall be a member of the Board of Directors, shall have such powers and duties as may be assigned to him by the Board of Directors and shall exercise the powers of the ~~president~~ President during the officer's absence or inability to act. Any action taken by the ~~vice president~~ Vice President in the performance of the duties of the ~~president~~ President shall be conclusive evidence of the absence or ~~inability~~ inability to act of the ~~president~~ President at the time such action was taken.

~~Section 4. Treasurer.~~ Section 4. Treasurer. To the extent not otherwise provided by the Board of Directors, by rules or regulations, in resolutions relating to the issuance of bonds, or in any financing documents relating to such issuance, the Treasurer shall have custody of all of the funds and securities of the Corporation which come into his hands. When necessary or proper, he may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; he may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such other officer as is designated by the Board of Directors; whenever required by the Board of Directors, he shall enter or cause to be entered regularly in the books of the Corporation to be kept by him for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation; he shall perform all acts incident to the positions of ~~treasurer~~ Treasurer subject to the control of the Board of Directors, give such

bond for the faithful discharge of ~~this~~his duties in such form as the Board of Directors may require.

~~Section 5.~~ Section 5. Secretary. The ~~secretary~~Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; he shall attend to the giving and serving of all notices; in furtherance of the ~~purpose~~purposes of this Corporation, he may sign with the ~~president~~President in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he shall have charge of the corporate books, records, ~~and documents and instruments~~, except the books of account and financial records and securities of which the ~~treasurer~~Treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon ~~applications~~application at the office of the Corporation during business hours, and he shall in general perform all duties incident to the office of ~~secretary~~Secretary subject to the control of the Board of Directors.

~~Section 6.~~ Section 6. Compensation. Officers as such shall not receive any salary or compensations for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

#### ARTICLE IV ARTICLE IV

#### **PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS**

~~Section 1.~~ Section 1. Effective Date. These Bylaws shall become effective only upon the occurrence of the following events:

- (1)     ~~(3)~~ ~~The~~the approval of these Bylaws by the City Council; and
- (2)     ~~(4)~~ ~~The~~the adoption of these Bylaws by the Board of Directors.

~~Section 2.~~ Section 2. Amendments to Articles of Incorporation and Bylaws. The Articles of ~~incorporation~~Incorporation may at any time and from time to time be amended, provided that the Board of Directors files with the City Council a written application requesting that the City Council approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made. If the City Council by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes or directs the same to be made and approves the form of the proposed amendment, the Board of Directors shall proceed to amend the Articles of Incorporation ~~and~~as provided in the Act.

The Articles of Incorporation may also be amended at any time by the City Council at ~~its~~its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the City Council and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

These Bylaws may be altered, substituted, repealed or amended by majority vote of the Board of Directors subject to approval by City Council.

~~Section 3.~~ Section 3. Interpretation of Bylaws. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

**ARTICLE V**  
**ARTICLE V**  
**GENERAL PROVISIONS**

~~Section 1. Principle Office.~~ The principal office of the Corporation shall be located in Houston, Texas.

Section 1. Principal Office. The principal office of the Corporation shall be located in Houston, Texas. The Corporation shall have and continuously maintain in the State a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, the same as the principal office in the State, and the address of the registered office or the registered agent ~~by~~ may be changed from time to time by the Board of Directors, pursuant the requirements of the Act.

~~Section 2.~~ Section 2. Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors.

~~Section 3.~~ Section 3. Seal. The seal of the Corporation shall be as determined by the Board of Directors.

~~Section 4.~~ Section 4. Notice and Waiver of Notice. Other than notice required by the Open Meeting Meetings Act, Chapter 551, Texas Government Code, whenever any notice whatsoever is required to be given under the provisions of the Act, the Articles of Incorporation or these Bylaws, said notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed sent via first class mail to the person entitled thereto at his post office their address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless required by the Board of Directors. A waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

~~Section 5.~~ Section 5. Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the president President or secretary Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

~~Section 6.~~ Section 6. Action Without a Meeting of Directors or Committees. Any action which may be taken without a meeting of the Board of Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the ~~directors~~Directors in office, or all of the members of the committee, as a unanimous vote and may be stated as such in any articles or documents filed with the Secretary of State, the Texas Industrial Commission or any other personBond Review Board or the Office of the Governor of the State of Texas, Economic Development and Tourism Division.

~~Section 7.~~ Section 7. Approval or Advice and Consent of the City Council. To the extent that these Bylaws refer to any approval by the City of Houston or City Council or refer to advice and consent by the City of Houston or City Council, such advice and consent shall be evidenced by a certified copy of a resolution, ~~order~~ordinance or motion duly adopted by the City Council.

~~Section 8.~~ Section 8. Organizational Control. The City of Houston may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to dissolve the Corporation), subject to any limitation on the impairment of contracts entered ~~into~~into by such Corporation.

~~Section 9.~~ Section 9. Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation ~~at such time~~ shall automatically vest in the City of Houston without any further conveyance, transfer, or act of any kind whatsoever.

**BLACKLINE**

**Request Package No. \_\_\_\_\_ - 2009**

**CITY OF HOUSTON INDUSTRIAL DEVELOPMENT CORPORATION  
REGULATIONS AND APPLICATION FOR FINANCIAL PARTICIPATION**



**CITY OF HOUSTON  
INDUSTRIAL DEVELOPMENT CORPORATION (“Corporation”)**

**REGULATIONS FOR RECEIVING & APPROVING APPLICATIONS  
FOR FINANCIAL PARTICIPATION**

These instructions and the attached material should be read carefully and thoroughly by each Applicant.

**Section 1. Definitions.** As used in these Regulations, the following words or terms shall have the meanings assigned to them in this Section, unless a contrary intent is clearly shown by the context:

“Act” –the Development Corporation Act, Chapter 501, Texas Local Government Code, as amended.

“Applicant” – the person, firm, partnership or corporation which makes an application for financial participation in a Project by seeking to have the Corporation issue Bonds or other obligations to provide a Project.

“Application” – the form of Application for Financial Participation approved by the Corporation, as amended from time to time.

“Application Fee” – the amount of \$2000 which is to be paid by each Applicant to the Corporation upon submission of the Application, which amount is non-refundable.

“Bonds” – obligations issued by the Corporation to finance the costs of a Project, whether in the form of notes, bonds or in some other form.

“Bond Counsel” – the firm recommended to serve as Bond Counsel to the Corporation in connection with an issue of Bonds and to perform the services specified in these Regulations. Bond Counsel must be approved by the Board.

“Bond Review Board” – the Texas Bond Review Board.

“Board” – the Board of Directors of the Corporation.

“Closing Fee” – a fee of \$15,000 payable to the Corporation and any other actual costs as described ~~the~~in Section 65 of the Regulations. The Application Fee shall be credited toward the \$15,000 Closing Fee.

“Code” – the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed and final regulations and revenue rulings issued or promulgated thereunder, as amended and in effect from time to time.

“Corporation” – City of Houston Industrial Development Corporation.

“Division” – Office of the Governor of the State of Texas, Economic Development and Tourism Division.

“Division Rules” – the rules for the Industrial Revenue Bond Program adopted by the Division, as amended from time to time.

“General Counsel” – the firm of Vinson & Elkins LLP, which has been retained as General Counsel to the Corporation, or such other firm retained by the Corporation from time to time.

“Inducement Resolution” – a resolution adopted by the Board taking preliminary official action toward the issuance of tax-exempt Bonds in accordance with the provisions of the Code Act.

“Inducement and Indemnity Agreement” – as included in the Application on page 6.

“Issuer” – City of Houston Industrial Development Corporation.

“Private Activity Bond Rules” – the rules prescribed by the Bond Review Board under Chapter 190, Texas Administrative Code, as amended regarding practice and procedure in the allocation administration of the authority in the State of Texas to issue private activity bonds.

“Project” – the land, equipment, building, facilities, and improvements (any one or all) as further defined in the Act and the Rules of the Division, to be financed, in whole or in part, by the Corporation through the issuance of the Bonds.

“Regulations” – these Regulations, which may be amended from time to time by the Board.

“Unit” – City of Houston, Texas.

**Section 2. Application.** An Applicant may request the Corporation to provide financial participation in a Project by filing the following with the Board:

(a) a copy of a commitment letter from either (i) a bank or financial institution agreeing to purchase the Bonds; or (ii) an investment banker agreeing to market the Bonds;

(b) five (5) originally executed copies of a completed Application and a completed Inducement and Indemnity Agreement as included in the Application; and

(c) a check or money order, payable to the Corporation, in the amount of the Application Fee, which amount is non-refundable but shall be credited toward the Closing Fee.

The documents and fees required by this Section shall be filed with the Corporation by mailing or delivering the same to the Board of Directors, City of Houston Industrial

Development Corporation, c/o Vinson & Elkins LLP, 1001 Fannin, Suite 2500, Houston, Texas 77002, Attention: Barron Wallace. Applicants are invited to contact the Corporation staff or General Counsel with any questions concerning the Application.

**Section 3. Inducement Resolution.** After the filing of the documents required in Section 2, the following procedures will be ordinarily followed by the Corporation:

(a) The Board will review the Application and, if it finds there is reasonable certainty that (i) the Application, the Bonds, and the Project will qualify for final action by the Board in accordance with these Regulations; and (ii) the financing of the Project will be in furtherance of the public purposes of the Corporation as set forth in the Act and the Division Rules, it will adopt an Inducement Resolution as provided by applicable law. In making the findings set forth in this paragraph, the Board may request such information concerning the Applicant and the Project as it deems necessary and appropriate.

**Section 4. Final Approvals.** When all financing documents have been prepared and completed by the Applicant, they shall be filed with the Board for its approval. The Board will consider its final action pertaining to issuance of Bonds when requested to do so by the Applicant. Projects will be finally approved by the Board if it determines that all requirements for and prerequisites to final approval under these Regulations have been met and are in form and substance satisfactory to the Board.

**Section 5. Fees and Expenses.** Fees and out-of-pocket expenses shall be paid pursuant to the procedures set out below:

(a) Concurrently with the filing of an Application, the Applicant shall pay the Corporation the Application Fee, which amount is non-refundable, whether or not the Application is approved or the financing of the Project is accomplished.

(b) Concurrently with the filing of an application for reservation of volume cap from the Bond Review Board, the Applicant shall pay the Bond Review Board application fee and subsequently will pay the Bond Review Board's filing fees as required by Section 1372.006, Texas Government Code, as amended and the Private Activity Bond Rules.

(c) Concurrently with the filing of an application for approval of the Project by the Division, the Applicant shall pay the Division the amount of the filing fee of the Division required by the Act and the Division Rules.

(d) Concurrently with the issuance of any Bonds pursuant to an approved Application, the Applicant shall pay all professional fees, expenses and other costs relating to the Bonds, including but not limited to:

(i) the fees and expenses of Bond Counsel;

- (ii) the fees and expenses of General Counsel;
- (iii) the Attorney General's filing fee;
- (iv) the fees and expenses of any financial advisor retained by the Corporation.
- (v) any other costs associated with the transaction; and
- (vi) the Closing Fee payable to the Corporation.

(e) The Corporation reserves the right at any time to change, increase, or reduce the fees and expenses payable under these Regulations and to make the same effective as to any Applicant whose Application is filed, or Bonds are delivered, subsequent to the date of such change.

(f) All fees imposed from time to time by the Corporation under these Regulations will be imposed in such amounts as will provide funds, as nearly as may be practicable, equal to that amount necessary to pay the administrative costs of conducting the business and affairs of the Corporation.

**Section 6. Amendments and Waivers.** The Board may amend these Regulations or waive any portion of these Regulations, as the Board deems is in the best interest of the Corporation, effective with respect to any Application filed subsequent to the effective date of any such amendment.

**CITY OF HOUSTON  
INDUSTRIAL DEVELOPMENT CORPORATION  
APPLICATION FOR FINANCIAL PARTICIPATION**

The undersigned, on behalf of the entity named as Applicant, hereby advises the City of Houston Industrial Development Corporation (the "Corporation"), that it is considering the acquisition, construction and/or improvement of certain facilities used or useful in its trade or business as described in Chapter 501, Texas Local Government Code, as amended, (the "Act") as more particularly described in the Application (the "Project") located in the City of Houston, Texas (the "City of Houston") or its environs, which ~~project~~Project will materially benefit the City and its populace. A contributing factor which would further induce Applicant to proceed with the Project would be a commitment and agreement by the Corporation to issue its revenue bonds pursuant to the Act, to finance and pay for all or a portion of the Project. In order to secure such commitment and agreement by the Corporation, Applicant hereby certifies as follows:

- (1) The Application for Financial Participation has been completed to the best of Applicant's ability, and the information contained therein and on any attachments thereto, represents a reasonably comprehensive outline of the Project and the financing requested in connection therewith.
- (2) Applicant will be further induced to proceed with the Project if the Corporation will adopt an Inducement Resolution as defined in the Regulations.
- (3) The Applicant should continue the Project to completion or abandon the Project by notice in writing to the Board. If the Applicant takes no action to implement the Project (pursuant to the Inducement Resolution) for a period of 12 months, the Corporation may, in its sole discretion, repeal the Inducement Resolution.
- (4) To the extent applicable, there shall be filed with the Board a pro forma copy of an official statement, prospectus or other offering memoranda, through the use of which the proposed Bonds are to be offered, sold or placed with any lender, purchaser or investor, which offering, sale or placement material shall contain prominent disclosure substantially to the effect that (i) neither the Corporation nor the Unit has undertaken to review or has assumed any responsibility for the matters contained therein except solely as to matters relating to a description of the Corporation and the Unit; (ii) all approvals, findings and determinations by the Corporation and the Unit, respectively, are and have been made by each for its own internal uses and purposes in performing its duties under the Act and these Regulations; (iii) notwithstanding their respective approvals of the Bonds and the Project, neither the Corporation nor the Unit, endorses or in any manner, directly or indirectly, guarantees or promises to pay such obligations from any source of funds of either or guarantees, warrants or endorses the creditworthiness or credit

standing of the Applicant or of any guarantor of such obligations; (iv) such Bonds are payable solely from the funds and secured solely by property furnished and to be furnished and provided by the Applicant and any guarantor and/or letter of credit bank and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the Corporation, the Unit, the State of Texas or any of its political subdivisions; and (v) by its issuance thereof, the Corporation does not in any manner, directly or indirectly, guarantee, warrant or endorse the creditworthiness or credit standing of the Applicant or of any guarantor of such obligations or the investment quality or value of the same.

- (5) The Applicant will (a) pay all Project costs which are not or cannot be paid or reimbursed from the proceeds of bonds or other evidences of indebtedness issued by the Corporation to provide funds to finance the Project and (b) will indemnify and hold harmless the Issuer and its directors against all losses, costs, damages, expenses and liabilities of whatsoever nature (including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) incurred by or asserted against any such indemnified party directly or indirectly resulting from, arising out of or related to the issuance, offering, sale, or delivery of the Bonds, or the design, construction, installation, operation, use, occupancy, maintenance ~~or~~ ownership or management of the Project, whether or not any such indemnified party is alleged or found to have been negligent in connection therewith.

Having read and complied with the Regulations, Applicant hereby requests that the Corporation consider this Application and adopt an Inducement Resolution, as required by the Act, on behalf of Applicant and herewith tenders the Application Fee as defined in the Regulations.

The undersigned warrants that he or she is properly authorized to submit and execute this Application on behalf of Applicant.

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name of Applicant

By: \_\_\_\_\_  
Authorized Officer or Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Presently Estimated  
Amount of Project  
Financing Requested**

\$ \_\_\_\_\_

**Please provide the following information, attaching additional sheets hereto if necessary. Capitalized terms used herein but not defined herein shall have the same meaning ascribed to them in the Regulations.**

**1. General Information Concerning Applicant:**

- a. Legal name, state of incorporation (or other form of organization or association), employer identification number, address and telephone number of Applicant, along with contact person for Application.
- b. Is Applicant a nonprofit corporation (a "Nonprofit Applicant")? If so, please attach determination letter from the Internal Revenue Service to this effect.
- c. Name, address and telephone number of all parties involved. Please include counsel for Applicant (may or may not be Bond Counsel).
- d. A brief statement of the history and type of business in which the Applicant engages.

**2. Description of Project:**

- a. Please describe the Project, state the total cost of the Project and the amount of financing applied for along with an estimate of sources and uses of proposed bond proceeds.

**3. Financial Arrangements:**

- a. Attach letter from either (i) a qualified bank or financial institution agreeing to purchase the bonds, or (ii) an investment banker agreeing to market the bonds; summarize the financing arrangements for the Project as planned as of this date. If Applicant has a credit rating, please state the rating and the agency issuing such rating.

- b. Provide the following information regarding outstanding tax-exempt financing used to finance the Project or any other facilities used by Applicant or Related Persons wholly or partly within the City of Houston. (Date of Issue, Amount of Issue, Amount Outstanding as of Estimated Date of Issue of the Bonds).
- c. Is the Project site owned or leased by Applicant?
  - 1. If owned, please provide date of purchase (i.e., closing date), purchased from, purchased price, amount of mortgage, and mortgagee.
  - 2. If leased: please provide lessor, date of lease, and terms. In addition, please state if there is any option to purchase and give date option agreement signed with owner, amount of down payment or option payment, purchase price, estimated purchase date (i.e., closing date).
  - 3. If any part of the Project will be leased to a tenant other than Applicant, please indicate: (i) total square footage of Project, and (ii) amount to be leased to each tenant (if more than 10% in space or in value):

4. **Project Schedule:**

- a. Please list the anticipated project schedule and dates, include major activities such as site clearance, foundation, building construction, and completion.
- b. What estimated costs will have been paid or incurred on the Project prior to the approximate date the Corporation will adopt the Inducement Resolution?

5. **Financial Statements:**

- a. If applicable, attach Applicant's and each guarantor's most recent Form 10-K filed with the Securities and Exchange Commission or audited financial statement, together with Applicant's and each guarantor's most recent Form 10-Q or audited financial statement.

Or:



Provide a brief description of the form of Applicant's and each guarantor's organization and organizational structure, including parent, subsidiaries and affiliates.

**6. Neighborhood/Community Issues:**

- a. Is the project located within a residential area? If yes, have you contacted the neighborhood civic organizations to discuss the impact of the Project on the surrounding neighborhoods?
- b. Have you contacted anyone else to assess the impact of the Project on the surrounding neighborhoods?
- c. How will the Project address the requirements of the Act?
- d. ~~Are~~Deed Restrictions

1. ~~If there are~~ deed restrictions ~~relating with respect~~ to the Project site that need to be disclosed?

\_\_\_\_\_ Yes \_\_\_\_\_ No If yes, provide an affidavit signed by an authorized representative of Applicant certifying that no provision of the deed restrictions, if any, will be violated by the Project; and that the proposed project shall comply with applicable City planning and development ordinances; and

Affidavit Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

~~Copies~~2. Provide copies of the deed restrictions, if any, for the property or properties on which the Project will be constructed together with a certificate of Applicant to the effect that such deed restrictions constitute the only deed restrictions applicable to the Project site; and

Copy(s) Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

~~A3.~~ Provide a statement from the lender, if only one lender is to be involved, or from the lead lender, if a consortium of lenders is to be involved, affirmatively stating that to the best of its knowledge no deed restriction violations will occur as a result of approving the Project.

Statement Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

e. ~~Is there~~ Residential Displacement

1. Will the Project cause any residential displacement that will occur as a result of the Project?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If it is determined that construction of the Project requires relocation of residents living at the site, or that ~~Construction~~ construction of the Project be the principal determining factor necessitating relocation of residents living in the immediate vicinity of the site. — (“Principal determining factor” means that if the Project were not constructed, those persons living in the immediate vicinity of the Project site would not have to be relocated), Applicant must provide a plan for relocation assistance. Relocation assistance shall include but not necessarily be limited to a commitment to fund at least one-half of the cost to the displaced residents of finding comparable housing in a comparable area.

Plan Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

BYLAWS

CITY OF HOUSTON HEALTH FACILITIES DEVELOPMENT CORPORATION

ARTICLE I  
POWERS AND PURPOSES

Section 1. Financing Powers. In order to implement the purposes for which the City of Houston Health Facilities Development Corporation (the "Corporation") was formed as set forth in the Articles of Incorporation, the Corporation may issue revenue bonds, notes or other obligations or securities for any of the purposes set forth in Article 1528j, the Health Facilities Development Act, Vernon's Annotated Chapter 221, Texas Civil Statutes Health and Safety Code, as amended (the "Act"). The Corporation shall, in addition, have those rights and powers as enumerated in that Act.

Section 2. Conditions Precedent to Issuance of Obligations. The Corporation shall not issue any bonds, notes or other obligations, including those for refunding purposes, unless the City Council ("City Council") has approved by written resolution, adopted no more than sixty (60) days prior to the date of delivery of the bonds, notes or other obligations, specifically approving the resolution of the Corporation providing for the issuance of the bonds, notes or other obligations. Prior to the issuance of bonds, notes or other obligations by the Corporation not later than the 15<sup>th</sup> day before the date on which bonds are issued, the proceeds of which are to be used to pay all or part of the cost of a health facility, the Corporation shall file with the sponsoring entity's governing body, the City Council (the "City Council"), a full and complete description of any health facility, the cost of which is to be paid in whole or in part from the proceeds of bonds, notes or other obligations of the Corporation proposed to be issued, including (1) an explanation of the projected costs of and of the necessity for such the proposed health facility and the name of the proposed health facility and; and (2) the name of the proposed user of such the health facility, in accordance with Section 221.062 of the Act. All of the information deposited or required to be deposited by this section Section shall be public information and open to public inspection.

However, if the Corporation will acquire, own, hold title to, lease, or operate a health facility or any facility incidental, subordinate, or related to the health facility, then ownership by the Corporation must be approved by official action of the City Council.

Section 3. Books and Records; Approval of Programs and Financial Statements. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors of the Corporation (the "Board of Director") Directors") and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any director or his agent or attorney for any proper purpose at any reasonable time; and at all times the City Council will have access to the books and records of the Corporation. The City of Houston shall be entitled to review all programs, expenditures and any financial statements of the Corporation.

Section 4. Nonprofit Corporation. The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of ~~its~~ the expenses, bonds or other obligations shall inure to the benefit of any private individual, firm or corporation, except that in the event the Board of Directors shall determine that sufficient provision has been made for the

full payment of expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City of Houston.

Section 5. Effect of Articles of Incorporation and Ordinance. The affairs of the Corporation shall at all times be conducted in a manner subject to and in compliance with the provisions and requirements of the Articles of Incorporation of the Corporation and the Ordinance of the City ordering its creation.

## **ARTICLE II BOARD OF DIRECTORS**

Section 1. Powers, Number and Term of Office. The property and affairs of the Corporation shall be managed and controlled by the Board of Directors and, subject to restrictions imposed by law, the Articles of Incorporation and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

The Board of Directors shall consist of nine (9) directors, each of whom shall be ~~appointed~~nominated by the Mayor and confirmed by City Council.

~~The Directors~~directors constituting the first Board of Directors shall be those directors named in the Articles of Incorporation. Each director appointed to the Board of Directors shall be appointed to a designated and numbered position on the Board. ~~The term of office for the uneven numbered positions will expire on the first day of January, 2003, and thereafter the terms of appointees to such uneven numbered positions will expire on the first day of January of every uneven numbered year. The term of the first appointees to the even numbered positions on the Board will expire on the first day of January, 2002 and thereafter the terms of appointees to the even numbered positions will expire on the first day of January of every even numbered year, each of whom shall serve for three (3) years.~~ Each director will hold office for the duration of the term for which he is appointed and until his or her successor is nominated by the Mayor and confirmed by the ~~Governing Body~~City Council. ~~No officer or employee of the City is eligible for appointment as a director.~~

Any director may be removed from office, at any time, with or without cause, by ordinance of the Governing Body of the City. All vacancies, from whatever cause, shall be filled by nomination of the Mayor and confirmation by the City Council, for cause or at will.

Section 2. Meetings of Directors. ~~The directors~~Board of Directors may hold ~~their~~its meetings at such place or places in the State of Texas (the "State"), as the Board of Directors may from time to time ~~determine~~designate; provided, however, in the absence of any such ~~determination~~designation by the Board of Directors, the meetings shall be held at the registered office of the Corporation in the State.

Section 3. Regular and Special Meetings. Meetings of the Board of Directors shall be held pursuant to notice posted consistent with Article V hereof which shall designate such time and places as shall be designated, from time to time, by resolution of the Board of Directors.

Section 4. Public Hearings. Public hearings required under Section 147(f) of the Internal Revenue Code of 1986, as amended, may be called and conducted by any officer, director or designee of the Corporation as may be designated in writing by the President of the Corporation, and such officer, director or designee may establish the date, place and time of the hearing and may give notice of the hearing.

Section 5. Quorum. A majority of the ~~directors~~ Board of Directors fixed by the Articles of Incorporation shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. The act of a majority of the ~~directors~~ Board of Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors, unless the act of a greater number is required by law.

Section 5-6. Conduct of Business. At the ~~meeting~~ meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the ~~president~~ President shall preside, and in the absence of the ~~president~~ President, the ~~vice president~~ Vice President shall exercise the powers of the ~~president~~ President.

The ~~secretary~~ Secretary of the Corporation shall act as ~~secretary~~ Secretary of all meetings of the Board of Directors, but in the absence of the ~~secretary~~ Secretary, the presiding officer, subject to Article III, Section 1, may appoint any person to act as ~~secretary~~ Secretary of the meeting.

Section 6-7. Executive Committee. The Board of Directors, by resolution passed by a majority of the directors in office, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Corporation, except where action of the Board of Directors is specified by law. The executive committee shall act in the manner provided in such resolution. The executive committee so designated shall keep regular minutes of the transactions of its meetings ~~and~~, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board of Directors from time to time.

The majority of the Board of Directors in office may delegate authority to an officer who shall be authorized, empowered and directed from time to time and at any time to do and perform the execution of documents and other acts and things as necessary for the administration of the Corporation.

Section 7-8. Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they ~~shall~~ may be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

### **ARTICLE III OFFICERS**

Section 1. Titles and Term of Office. The officers of the Corporation shall be a ~~president, a vice president, treasurer~~President, a Vice President, Treasurer, and a ~~secretary~~Secretary, and such other officers as the Board of Directors may from time to time elect or appoint. One person may hold more than one office, except that the ~~president~~President shall not hold the office of the ~~secretary~~Secretary.

All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the entire Board of Directors.

A vacancy in the office of any officer shall be filled by a vote of a majority of the Board of Directors.

Section 2. Powers and Duties of the President. The ~~president~~President shall be the chief executive officer of the Corporation and a member of the Board of Directors and, subject to the approval of the Board of Directors, he shall be in general charge of the properties and affairs of the Corporation; ~~he shall preside at all meetings of the Board of Directors; in at which he is present and sign all resolutions passed at those meetings.~~ In furtherance of the purposes of the Corporation, he may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board of Directors of the Corporation to some other officer or agent of the Corporation. In the absence of the Secretary, any officer other than the President may act in the Secretary's place.

Section 3. Vice President. The ~~vice president~~Vice President shall be a member of the Board of Directors, shall have such powers and duties as may be assigned to him by the Board of Directors and shall exercise the powers of the ~~president~~President during the officer's absence or inability to act. Any action taken by the ~~vice president~~Vice President in the performance of the duties of the ~~president~~President shall be conclusive evidence of the absence or inability to act of the ~~president~~President at the time such action was taken.

Section 4. Treasurer. ~~The treasurer~~To the extent not otherwise provided by the Board by rules or regulations, in resolutions relating to the issuance of bonds, or in any financing documents relating to such issuance, the Treasurer shall have custody of all of the funds and securities of the Corporation which come into his hands. When necessary or proper, he may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; he may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such other officer as is designated by the Board of Directors; whenever required by the Board of Directors, he shall enter or cause to be entered regularly in the books of the Corporation to be kept by him for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation; he shall perform all acts incident to the positions of ~~treasurer~~Treasurer subject to the control of the Board of Directors, give such bond for the faithful discharge of ~~this~~his duties in such form as the Board of Directors may require.

Section 5. Secretary. The ~~secretary~~Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; he shall attend to the giving and serving of all notices; in furtherance of the ~~purpose~~purposes of this Corporation, he may sign with the ~~president~~President in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other

instruments of the Corporation; he shall have charge of the corporate books, records, and documents and instruments, except the books of account and financial records and securities of which the ~~treasurer~~Treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon ~~applications~~application at the office of the Corporation during business hours, and he shall in general perform all duties incident to the office of ~~secretary~~Secretary subject to the control of the Board of Directors.

Section 6. Compensation. Officers as such shall not receive any salary or compensations for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

#### **ARTICLE IV PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS**

Section 1. Effective Date. These Bylaws shall become effective only upon the occurrence of the following events:

- (1) ~~The~~the approval of these Bylaws by the City Council; and
- (2) ~~The~~the adoption of these Bylaws by the Board of Directors.

Section 2. Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation may at any time and from time to time be amended, provided that the Board of Directors files with the City Council a written application requesting that the City Council approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made. If the City Council by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes or directs the same to be made and approves the form of the proposed amendment, the Board of Directors shall proceed to amend the Articles of Incorporation as provided in the Act.

The Articles of Incorporation may also be amended at any time by the City Council at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the City Council and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

These Bylaws may be altered, substituted, repealed or amended by majority vote of the Board of Directors subject to approval by City Council.

Section 3. Interpretation of Bylaws. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

## **ARTICLE V GENERAL PROVISIONS**

**Section 1. Principal Office.** The principal office of the Corporation shall be located in Houston, Texas. The Corporation shall have and continuously maintain in the State a registered office, and registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, the same as the principal office in the State, and the address of the registered office or the registered agent may be changed from time to time by the Board of Directors, pursuant the requirements of the Act.

**Section 2. Fiscal Year.** The fiscal year of the Corporation shall be as determined by the Board of Directors.

**Section 3. Seal.** The seal of the Corporation shall be as determined by the Board of Directors.

**Section 4. Notice and Waiver of Notice.** Other than notice required by the Open Meetings Act, Chapter 551, Texas Government Code, whenever any notice whatsoever is required to be given under the provisions of the Act, the Articles of Incorporation or these Bylaws, said notice shall be deemed to be sufficient if sent via first class mail to the person entitled thereto at their address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless required by the Board of Directors. A waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 5. Resignations.** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the ~~president~~President or ~~secretary~~Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**Section 6. Action Without a Meeting of Directors or Committees.** Any action which may be taken without a meeting of the Board of Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the ~~directors~~Board of Directors in office, or all of the members of the committee, as a unanimous vote and may be stated as such in any articles or documents filed with the Secretary of State.

**Section 7. Approval or Advice and Consent of the City Council.** To the extent that these Bylaws refer to any approval by the City of Houston or City Council or refer to advice and consent by the City of Houston or City Council, such advice and consent shall be evidenced by a certified copy of a resolution, ~~order~~ordinance or motion duly adopted by the City Council.

**Section 8. Organizational Control.** The City of Houston may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to dissolve the Corporation), subject to any limitation on the impairment of contracts entered into by such Corporation.



Section 9. Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation shall automatically vest in the City of Houston without any further conveyance, transfer, or act of any kind whatsoever.

**BLACKLINE**

**Request Package No. \_\_\_\_\_ - \_\_\_\_\_2009**

**CITY OF HOUSTON HEALTH FACILITIES DEVELOPMENT CORPORATION  
REGULATIONS AND APPLICATION FOR FINANCIAL PARTICIPATION**

**CITY OF HOUSTON**  
**HEALTH FACILITIES DEVELOPMENT CORPORATION (“Corporation”)**  
**REGULATIONS FOR RECEIVING & APPROVING APPLICATIONS**  
**FOR FINANCIAL PARTICIPATION**

These instructions and the attached material should be read carefully and thoroughly by each Applicant.

**Section 1. Definitions.** As used in these Regulations, the following words or terms shall have the meanings assigned to them in this Section, unless a contrary intent is clearly shown by the context:

“Act” – Chapter 221, Texas Health and Safety Code, as amended.

“Applicant” – the person, firm, partnership or corporation which makes an application for financial participation in a Project by seeking to have the Corporation issue Bonds or other obligations to provide a Project.

“Application” – the form of Application for Financial Participation approved by the Corporation, as amended from time to time.

“Application Fee” – the amount of \$2000 which is to be paid by each Applicant to the Corporation upon submission of the Application, which amount is non-refundable.

“Bonds” – obligations issued by the Corporation to finance the costs of a Project, whether in the form of notes, bonds or in some other form.

“Bond Counsel” – the firm recommended to serve as Bond Counsel to the Corporation in connection with an issue of Bonds and to perform the services specified in these Regulations. Bond Counsel must be approved by the Board.

“Board” – the Board of Directors of the Corporation.

“Closing Fee” – a fee of \$15,000 payable to the Corporation and any other actual costs as described ~~the~~in Section ~~65~~6 of the Regulations. The Application Fee shall be credited toward the \$15,000 Closing Fee.

“Code” – the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed and final regulations and revenue rulings issued or promulgated thereunder, as amended and in effect from time to time.

“Corporation” – City of Houston Health Facilities Development Corporation.

“General Counsel” – the firm of Vinson & Elkins LLP, which has been retained as General Counsel to the Corporation, or such other firm retained by the Corporation from time to time.

“Inducement Resolution” – a resolution adopted by the Board taking preliminary official action toward the issuance of tax-exempt Bonds in accordance with the provisions of the Act.

“Inducement and Indemnity Agreement” – as included in the Application on page ~~6~~6.

“Issuer” – City of Houston Health Facilities Development Corporation.

“Project” – the land, equipment, building, facilities, and improvements (any one or all) as further defined in the Act, to be financed, in whole or in part, by the Corporation through the issuance of the Bonds.

“Regulations” – these Regulations, which may be amended from time to time by the Board.

“Unit” – City of Houston, Texas.

**Section 2. Application.** An Applicant may request the Corporation to provide financial participation in a Project by filing the following with the Board:

- (a) a copy of a commitment letter from either (i) a bank or financial institution agreeing to purchase the Bonds; or (ii) an investment banker agreeing to market the Bonds;
- (b) five (5) originally executed copies of a completed Application; and a completed Inducement and Indemnity Agreement as included in the Application; and
- (c) a check or money order, payable to the Corporation, in the amount of the Application Fee, which amount is non-refundable but shall be credited toward the Closing Fee.

The documents and fees required by this Section shall be filed with the Corporation by mailing or delivering the same to the Board of Directors, City of Houston Health Facilities Development Corporation, c/o Vinson & Elkins LLP, 1001 Fannin, Suite 2500, Houston, Texas 77002, Attention: Barron Wallace. Applicants are invited to contact the Corporation staff or General Counsel with any questions concerning the Application.

**Section 3. Inducement Resolution.** After the filing of the documents required in Section 2, the following procedures will be ordinarily followed by the Corporation:

- (a) The Board will review the Application and, if it finds there is reasonable certainty that (i) the Application, the Bonds, and the Project will qualify for final action by the Board in accordance with these Regulations; and (ii) the financing of the Project will be in furtherance of the public purposes of the Corporation as set forth in the Act, it will adopt an Inducement Resolution as provided by applicable law. In making the findings set forth in this paragraph, the Board may request such information concerning the Applicant and the Project as it deems necessary and appropriate.

**Section 4. Final Approvals.** When all financing documents have been prepared and completed by the Applicant, they shall be filed with the Board for its approval. The Board will consider its final action pertaining to issuance of Bonds when requested to do so by the Applicant. Projects will be finally approved by the Board if it determines that all requirements for and prerequisites to final approval under these Regulations have been met and are in form and substance satisfactory to the Board; ~~and~~.

**Section 5. Fees and Expenses.** Fees and out-of-pocket expenses shall be paid pursuant to the procedures set out below:

(a) Concurrently with the filing of an Application, the Applicant shall pay the Corporation the Application Fee, which amount is non-refundable, whether or not the Application is approved or the financing of the Project is accomplished.

(b) Concurrently with the issuance of any Bonds pursuant to an approved Application, the Applicant shall pay all professional fees, expenses and other costs relating to the Bonds, including but not limited to:

- (i) the fees and expenses of Bond Counsel;
- (ii) the fees and expenses of General Counsel;
- (iii) the Attorney General's filing fee;
- (iv) the fees and expenses of any financial advisor retained by the Corporation.
- (v) any other costs associated with the transaction; and
- (vi) the Closing Fee payable to the Corporation.

(c) The Corporation reserves the right at any time to change, increase, or reduce the fees and expenses payable under these Regulations and to make the same effective as to any Applicant whose Application is filed, or Bonds are delivered, subsequent to the date of such change.

(d) All fees imposed from time to time by the Corporation under these Regulations will be imposed in such amounts as will provide funds, as nearly as may be practicable, equal to that amount necessary to pay the administrative costs of conducting the business and affairs of the Corporation.

**Section 6. Amendments and Waivers.** The Board may amend these Regulations or waive any portion of these Regulations, as the Board deems is in the best interest of the Corporation, effective with respect to any Application filed subsequent to the effective date of any such amendment.

**CITY OF HOUSTON**  
**HEALTH FACILITIES DEVELOPMENT CORPORATION**  
**APPLICATION FOR FINANCIAL PARTICIPATION**

The undersigned, on behalf of the entity named as Applicant, hereby advises the City of Houston Health Facilities Development Corporation (the "Corporation"), that it is considering providing, expanding and/or improving health facilities as described in Chapter 221, Texas Health and Safety Code, as amended, (the "Act") as more particularly described in the Application (the "Project") located in the City of Houston, Texas (the "City of Houston") or its environs, which ~~project~~Project will materially benefit the City and its populace. A contributing factor which would further induce Applicant to proceed with the Project would be a commitment and agreement by the Corporation to issue its revenue bonds pursuant to the Act, to finance and pay for all or a portion of the Project. In order to secure such commitment and agreement by the Corporation, Applicant hereby certifies as follows:

- (1) The Application for Financial Participation has been completed to the best of Applicant's ability, and the information contained therein and on any attachments thereto, represents a reasonably comprehensive outline of the Project and the financing requested in connection therewith.
- (2) Applicant will be further induced to proceed with the Project if the Corporation will adopt an Inducement Resolution as defined in the Regulations.
- (3) The Applicant should continue the Project to completion or abandon the Project by notice in writing to the Board. If the Applicant takes no action to implement the Project (pursuant to the Inducement Resolution) for a period of 12 months, the Corporation may, in its sole discretion, repeal the Inducement Resolution.
- (4) To the extent applicable, there shall be filed with the Board a pro forma copy of an official statement, prospectus or other offering memoranda, through the use of which the proposed Bonds are to be offered, sold or placed with any lender, purchaser or investor, which offering, sale or placement material shall contain prominent disclosure substantially to the effect that (i) neither the Corporation nor the Unit has undertaken to review or has assumed any responsibility for the matters contained therein except solely as to matters relating to a description of the Corporation and the Unit; (ii) all approvals, findings and determinations by the Corporation and the Unit, respectively, are and have been made by each for its own internal uses and purposes in performing its duties under the Act and these Regulations; (iii) notwithstanding their respective approvals of the Bonds and the Project, neither the Corporation nor the Unit, endorses or in any manner, directly or indirectly, guarantees or promises to pay such obligations from any source of funds of either or guarantees, warrants or endorses the creditworthiness or credit

standing of the Applicant or of any guarantor of such obligations; (iv) such Bonds are payable solely from the funds and secured solely by property furnished and to be furnished and provided by the Applicant and any guarantor and/or letter of credit bank and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the Corporation, the Unit, the State of Texas or any of its political subdivisions; and (v) by its issuance thereof, the Corporation does not in any manner, directly or indirectly, guarantee, warrant or endorse the creditworthiness or credit standing of the Applicant or of any guarantor of such obligations or the investment quality or value of the same.

- (5) The Applicant will (a) pay all Project costs which are not or cannot be paid or reimbursed from the proceeds of bonds or other evidences of indebtedness issued by the Corporation to provide funds to finance the Project and (b) will indemnify and hold harmless the Issuer and its directors against all losses, costs, damages, expenses and liabilities of whatsoever nature (including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) incurred by or asserted against any such indemnified party directly or indirectly resulting from, arising out of or related to the issuance, offering, sale, or delivery of the ~~Series 2009~~ Bonds, or the design, construction, installation, operation, use, occupancy, maintenance ~~or~~ ownership or management of the Project, whether or not any such indemnified party is alleged or found to have been negligent in connection therewith.

Having read and complied with the Regulations, Applicant hereby requests that the Corporation consider this Application and adopt an Inducement Resolution, as required by the Act, on behalf of Applicant and herewith tenders the Application Fee as defined in the Regulations.

The undersigned warrants that he or she is properly authorized to submit and execute this Application on behalf of Applicant.

Date: \_\_\_\_\_, \_\_\_\_\_, 2009.

\_\_\_\_\_  
Name of Applicant

By: \_\_\_\_\_  
Authorized Officer or Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Presently Estimated  
Amount of Project  
Financing Requested**

\$ \_\_\_\_\_

**Please provide the following information, attaching additional sheets hereto if necessary. Capitalized terms used herein but not defined herein shall have the same meaning ascribed to them in the Regulations.**

**1. General Information Concerning Applicant:**

- a. Legal name, state of incorporation (or other form of organization or association), employer identification number, address and telephone number of Applicant, along with contact person for Application.
- b. Is Applicant a nonprofit corporation (a "Nonprofit Applicant")? If so, please attach determination letter from the Internal Revenue Service to this effect.
- c. ~~Applicant an eligible institution within the meaning established in the Texas Health and Safety Code? Please attach evidence of eligibility.~~ Name, address and telephone number of all parties involved. Please include counsel for Applicant (may or may not be Bond Counsel).
- ed. A brief statement of the history and type of health services in which the Applicant engages.

**2. Description of Project:**

- a. Please describe the Project, state the total cost of the Project and the amount of financing applied for along with an estimate of sources and uses of proposed bond proceeds.

**3. Financial Arrangements:**

- a. Attach letter from either (i) a qualified bank or financial institution agreeing to purchase the bonds, or (ii) an investment banker agreeing to market the bonds; summarize the financing arrangements for the Project as planned as of this date. If Applicant has a credit rating, please state the rating and the agency issuing such rating.



- b. Provide the following information regarding outstanding tax-exempt financing used to finance the Project or any other facilities used by Applicant or Related Persons wholly or partly within the City of Houston. (Date of Issue, Amount of Issue, Amount Outstanding as of Estimated Date of Issue of the Bonds).
- c. Is the Project site owned or leased by Applicant?
  - 1. If owned, please provide date of purchase (i.e., closing date), purchased from, purchased price, amount of mortgage, and mortgagee.
  - 2. If leased: please provide lessor, date of lease, and terms. In addition, please state if there is any option to purchase and give date option agreement signed with owner, amount of down payment or option payment, purchase price, estimated purchase date (i.e., closing date).
  - 3. If any part of the Project will be leased to a tenant other than Applicant, please indicate: (i) total square footage of Project, and (ii) amount to be leased to each ~~Tenant~~tenant (if more than 10% in space or in value):

**4. Project Schedule:**

- a. Please list the anticipated project schedule and dates, include major activities such as site clearance, foundation, building construction, and completion.
- b. What estimated costs will have been paid or incurred on the Project prior to the approximate date the Corporation will adopt the Inducement Resolution?

**5. Financial Statements:**

- a. Applicant's and each guarantor's audited financial statements for each of the three preceding fiscal years, as available.

**6. Neighborhood/Community Issues:**

- a. Is the project located within a residential area? If yes, have you contacted the neighborhood civic organizations to discuss the impact of the Project on the surrounding neighborhoods?
- b. Have you contacted anyone else to assess the impact of the Project on the surrounding neighborhoods?
- c. How will the Project address the ~~needs~~requirements of the Act?
- d. Are there any deed restrictions relating to the Project that need to be disclosed?
- e. Is there any residential displacement that will occur as a result of the Project? If so, please explain.

**BYLAWS  
OF  
CITY OF HOUSTON  
HIGHER EDUCATION FINANCE CORPORATION**

**ARTICLE I**

**POWERS AND PURPOSES**

Section 1. ~~Section 1.1 Financing of Projects~~Powers. In order to implement the purposes for which the City of Houston, Texas, Higher Education Finance Corporation (the "Corporation") was formed, as set forth in the Articles of Incorporation, the Corporation may issue revenue bonds, notes or other obligations or securities to provide funding for all or part of the cost of one or ~~more~~more projects pursuant to the provisions of the ~~Section 53.35(b) Chapters 53, 53A and 53B,~~ Texas Education Code, as amended (the "Act"). The Corporation may also refinance any educational or housing facility acquired, constructed, or improved hereunder.

Section 2. ~~Section 1.2 Use of Obligation Proceeds.~~ The proceeds of any notes, bonds or other obligations of the Corporation shall be used purely for secular purposes.

Section 3. ~~Section 1.3 Approval of Issuance of Obligations.~~ The ~~Governing Body of the City under whose auspices the Corporation was created may approve by written resolution any agreement to issue bonds adopted by the Corporation, which agreement and resolution shall set out the amount and purpose of the bonds. Additionally, no issue of bonds, including refunding bonds, shall be sold and delivered by the Corporation without a written resolution of the Governing Body adopted no more than 60 days prior to the date of sale of the bonds specifically approving the resolution of the Corporation providing for the issuance of the bonds. The Corporation, at least fourteen (14) days prior to the issuance of~~Corporation shall not issue any bonds, notes or other obligations, including those for refunding purposes, unless not later than the 15<sup>th</sup> day before the day on which bonds are issued, the Corporation shall provide to the City sponsoring entity of the governing body (the "City Council") a full and complete description of any educational or housing facilities, or facilities which are incidental, subordinate or related thereto or appropriate in connection therewith, the cost of which is to be paid in whole or in part from the proceeds of such obligations of the Corporation, together with a full and complete description of the obligations issued in connection therewith and including an explanation of the projected costs of and the necessity for such proposed facility. All of the information deposited or required to be deposited by this Section shall be public information open to public inspection.

However, if the Corporation will acquire, own, hold title to, lease, or operate an educational facility or housing facility or any facility incidental, subordinate, or related to the educational or housing facility, then ownership by the Corporation must be approved by official action of the City Council.

Section 4. ~~Section 1.4 Books and Records: Approval of Programs and Financial Statements.~~ The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its ~~board of directors~~Board of Directors of the Corporation (the "Board of Directors") and committees having any of the

authority of the Board of Directors. All books and records of the Corporation may be inspected by any director or his agent or attorney for any proper purpose at any reasonable time; and at all times the ~~Governing Body of the City Council~~ will have access to the books and records of the Corporation. The ~~Governing Body of the City of Houston~~ shall be entitled to review and to revise the financial affairs, programs or activities of the Corporation including the power to terminate the Corporation, at any time and from time to time, subject to any limitation on the impairment of contract entered into by such Corporation. The City shall have all other rights reserved to it in the Articles of Incorporation of the Corporation and in the Ordinance of the City ordering its creation all programs, expenditures and any financial statements of the Corporation.

Section 5. ~~Section 1.5~~ Nonprofit Corporation. The Corporation shall be a nonprofit corporation and no part of its net earnings remaining after payment of its expenses, bonds or other obligations shall ever inure to the benefit of any private individual, firm or corporation, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City of Houston.

Section 6. ~~Section 1.6~~ Effect of Articles of Incorporation and Ordinance. The affairs of the Corporation shall at all times be conducted in a manner subject to and in compliance with the provisions and requirements of the Articles of Incorporation of the Corporation and the Ordinance of the City ordering its creation.

~~Section 1.7~~ Staff Functions. ~~Staff functions for the Corporation shall be performed by the City of Houston Planning and Development Department, under the direction of its Director.~~

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. ~~Section 2.1~~ Powers, Numbers ~~Number and Term of Office.~~ The property and affairs of the Corporation shall be managed and controlled by the Board of Directors, and subject to the restrictions imposed by law, the Articles of Incorporation and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

The Board of Directors shall consist of nine (9) directors, each of whom shall be nominated by the Mayor and confirmed by ~~the Governing Body of the City Council.~~

The directors constituting the first Board of Directors shall be those directors named in the Articles of Incorporation. Each director appointed to the Board shall be appointed to a designated and numbered position on the Board. The term of office for the first appointees to the uneven numbered positions will expire on the first day of January, 1987, and thereafter the terms of appointees to such uneven numbered positions will expire on the first day of January of every uneven numbered year. The term of the first appointees to the even numbered positions on the Board will expire on the first day of January, 1988, and thereafter the terms of appointees to the even numbered positions will expire on the first day of January of every even numbered year. Each director will hold office for the duration of the term for which he is appointed and

until his or her successor is nominated by the Mayor and confirmed by the ~~Governing Body of the City Council~~. ~~no~~No officer or employee ~~or~~of the City is eligible for appointment as a director.

Any director may be removed from office at any time, with or without cause, by ordinance of the Governing Body of the City. All vacancies, from whatever cause, shall be filled by nomination of the Mayor and confirmation by the ~~Governing Body of the City Council~~.

Section 2. ~~Section 2.2~~ Meetings of Directors. The Board of Directors may hold its meetings at ~~any~~such place or places in the State of Texas (the "State") as the Board of Directors may from time to time designate; provided ~~that, however,~~ in the absence of any such designation by the Board of Directors, the meetings shall be held at the registered office of the Corporation in the State of Texas.

Section 3. ~~Section 2.3~~ Regular and Special Meetings. ~~Regular Meetings of the Board of Directors shall be held at such times~~pursuant to notice posted consistent with Article V hereof which shall designate such time and places as shall be designated, from time to time, by resolution of the Board of Directors, a copy of which shall be delivered to the Mayor of the City and with such notice as may be required from time to time by law.

~~Section 2.4~~ Special Meetings. ~~Special Meetings of the Board of Directors shall be held whenever called by the President, by the Secretary, or by a majority of Governing Body of the City. At least three (3) days prior to any meeting, the Corporation shall notify the Mayor of the City that such meeting is to be held and the purpose(s) thereof.~~

~~The Secretary shall give notice to each director of each Special Meeting in person, or by mail, telephone or telegraph, at least two hours before the meeting. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a Special Meeting.~~

~~At any meeting at which every director shall be present, even though without any notice to the directors, any matter pertaining to the purpose of the Corporation may be considered and acted upon.~~

Section 4. ~~Section 2.5~~ Public Hearings. Public hearings required under Section ~~103147(kf)~~ of the Internal Revenue Code of ~~1954, 1986~~, as amended, may be called and conducted by any officer ~~or~~, director or designee of the Corporation as may be designated in writing by the President of the Corporation, and such officer ~~or~~, director or designee may establish the date, place and time of the hearing and may give notice of the hearing.

Section 5. ~~Section 2.6~~ Quorum. At all meetings ~~A majority of the Board, the presence of at least a majority directors shall be necessary and sufficient to~~ of Directors fixed by the Articles of Incorporation shall constitute a quorum for the transaction of business and the consideration of matters pertaining to the purposes of the Corporation. The act of a majority of the ~~directors~~ Board of Directors present at ~~any~~ a meeting at which there is a quorum is in attendance shall ~~be constitute~~ the act of the Board, except as may be otherwise specifically provided by these Bylaws or by law, and provided that a minimum of at least four affirmative votes shall be necessary for passage of any motion. If a quorum shall not be present at any meeting of the directors, the directors present thereat may recess the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present of Directors, unless the act of a greater number is required by law.

Section 6. ~~Section 2.7~~ Conduct of Business. At the meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the President shall preside, and in the absence of the President, the Vice President shall exercise the powers of the President.

The Secretary of the Corporation shall act as ~~secretary~~ Secretary of all meetings of the Board of Directors, but in the absence of the Secretary, the presiding officer, subject to ~~the first paragraph of Article III, Section 3.1.1,~~ may appoint any person to act as ~~secretary~~ Secretary of the meeting.

Section 7. ~~Section 2.8~~ Executive Committee. The Board of Directors, by resolution passed by a majority of the directors in office, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Corporation, except where action of the Board of Directors is specified by law ~~or by the Articles of Incorporation.~~ The executive committee shall act in the manner provided in such resolution. The executive committee so designated shall keep regular minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation and shall ~~file such minutes with~~ report the same to the Board of Directors from time to time.

The majority of the Board of Directors in office may delegate authority to an officer who shall be authorized, empowered and directed from time to time and at any time to do and perform the execution of documents and other acts and things as necessary for the administration of the Corporation.

Section 8. ~~Section 2.9~~ Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual expenses incurred in ~~performing such services~~ the performance of their duties hereunder.

## ARTICLE III

### OFFICERS

Section 1. ~~Section 3.1~~ Titles and Term of Office. The officers of the Corporation shall be a ~~president, a vice president, a secretary~~ President, a Vice President, Treasurer and a Secretary, and such other officers as authorized by these Bylaws. ~~Only the offices of secretary and treasurer may be combined. The Board shall elect from among its members a president and a vice president and shall elect a secretary and a treasurer who may or may not be directors. In the absence of the Secretary, any officer other than the President may act in the Secretary's place. Terms of officers shall not exceed two years.~~ the Board of Directors may from time to time elect or appoint. One person may hold more than one office, except that the President shall not hold the office of the Secretary.

All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the entire Board of Directors.

A vacancy in the office of any officer shall be filled by a vote of a majority of the Board of Directors.

Section 2. ~~Section 3.2~~ Powers and Duties of the President. The President shall be the chief executive officer of the Corporation and a member of the Board of Directors and, subject to the approval of the Board of Directors, ~~he~~ the President shall be in general charge of the properties and affairs of the Corporation. ~~He~~ shall preside at all meetings of the Board of Directors at which he is present and sign all resolutions passed at those meetings. ~~The President has the same right to vote on all matters as other members of the board.~~ In furtherance of the purposes of ~~this~~ the Corporation, the President may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation ~~under the seal of the Corporation~~, except where required or permitted by law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Board ~~or of the City Corporation~~ to some other officer or agent of the Corporation. In the absence of the Secretary, any officer other than the President may act in the Secretary's place.

~~The President shall be an ex-officio member of all standing committees, shall have general supervision of the management of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect.~~

#### Section 3.3 ~~Vice President~~

Section 3. Vice President. The Vice President shall be a member of the Board of Directors, shall have such powers and duties as may be assigned to him by the Board of Directors and shall exercise the ~~Bowers~~ powers of the President during ~~that~~ the officer's absence or inability to act. Any action taken by the Vice President in the performance of the duties of the

President shall be conclusive evidence of the absence or inability to act of the President ~~to act~~ at the time such action was taken.

Section 4. ~~Section 3.4~~ Treasurer. To the extent not otherwise provided by the Board of Directors, by rules or regulations, in resolutions relating to the issuance of bonds, or in any financing documents relating to such issuance, the Treasurer shall have custody of all of the funds and securities of the Corporation and ~~keep full and accurate accounts of the receipts and disbursements in books of the Corporation which come into his hands.~~ When necessary or proper, he may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same in the name of and to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; he may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such other officer as is designated by the Board of Directors; ~~he shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation.~~ In addition, whenever required by the Board of Directors, he shall enter or cause to be entered regularly in the books of the Corporation to be kept by him for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation; he shall perform all acts incident to the ~~position~~ positions of ~~treasurer~~ Treasurer subject to the control of the Board of Directors; he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 5. ~~Section 3.5~~ Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; he shall attend to the giving and serving of all notices; in furtherance of the purposes of this Corporation, he may sign with the President in the name of the Corporation; and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he shall have charge of the corporate books, records, documents and instruments except the books of account and financial records and, securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon application at the office of the Corporation during business hours, and he shall in general perform all duties incident to the office of ~~secretary~~ Secretary subject to the control of the Board of Directors.

Section 6. ~~Section 3.6~~ Compensation. Officers as such shall not receive any salary or ~~compensation~~ compensations for their services, except that they ~~may~~ shall be reimbursed ~~for~~ for their actual expenses incurred in performing such services the performance of their duties hereunder.



## ~~ARTICLE IV~~

### ~~FISCAL PROVISIONS~~

~~Section 4.1 Fiscal Provisions. No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any private individual, firm, corporation, or association, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City of Houston, Texas. The Corporation's activities shall not include propagandizing or otherwise attempting to influence legislation and it shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office.~~

~~Section 4.2 Checks. All checks, demands for money, withdrawals of money, notes, time and demand deposits and certificates of deposit shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate and approve by resolution, provided that in no event shall same be authorized or negotiable until signed by at least two authorized signatories, and further provided that, in the case of checks, demands for money, withdrawals of money, and notes in excess of \$500.00, at least one of the authorized signatories shall be that of an officer.~~

## ~~ARTICLE IV~~ARTICLE V

### **PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS**

~~Section 5.1 Effective Date. These Bylaws shall become effective only upon the occurrence of the following events:~~  
Section 1.

(1) the approval of these Bylaws by the ~~Governing Body of the City Council~~; and

(2) the adoption of these Bylaws by the Board of Directors.

Section 2. ~~Section 5.2~~ Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation may at any time and from time to time ~~by amended by either of the methods prescribed therein~~ be amended, provided that the Board of Directors files with the City Council a written application requesting that the City Council approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made. If the City Council by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes or directs the same to be made and approves the form of the proposed amendment, the Board of Directors shall proceed to amend the Articles of Incorporation as provided in the Act.

The Articles of Incorporation may also be amended at any time by the City Council at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the City Council and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

These Bylaws may be altered, substituted, repealed or amended ~~at any time and from time to time by majority vote of the Board of Directors; subject to the approval of the Governing Body of the~~ by City Council.

Section 3. ~~Section 5.3~~ Interpretation of Bylaws. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

## **ARTICLE V** ~~ARTICLE VI~~

### **GENERAL PROVISIONS**

Section 1. ~~Section 6.1~~ Principal Office. The principal office of the Corporation shall be located ~~at the principal offices of the City in Houston, Texas.~~ The Corporation shall have and continuously maintain in the State a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, the same as the principal office in the State, and the address of

the registered office or the registered agent may be changed from time to time by the Board of Directors, pursuant the requirements of the Act.

Section 2. ~~Section 6.2~~ Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors.

Section 3. ~~Section 6.3~~ Seal. The seal of the Corporation shall be as determined by the Board of Directors.

Section 4. ~~Section 6.4~~ Notice and Waiver of Notice. Other than ~~notices~~ notice required by the Open Meetings Act, ~~Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended~~ Chapter 551, Texas Government Code, whenever any notice whatsoever is required to be given under the provisions of the Act, the Articles of Incorporation or these Bylaws, said notice shall be deemed to be sufficient if ~~given by depositing the same in a post office box in a sealed postpaid wrapper addressed~~ sent via first class mail to the person entitled thereto at his ~~post office~~ their address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless required by the Board of Directors. A waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 5. ~~Section 6.5~~ Resignations. Any director or officer may resign at any time. Such ~~resignations~~ resignation shall be made in writing to the ~~Mayor of the City and the President of the Corporation.~~ A resignation ~~and~~ shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the ~~Mayor and the President or Secretary.~~ The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 6. Action Without a Meeting of Directors or Committees. Any action which may be taken without a meeting of the Board of Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the Directors in office, or all of the members of the committee, as a unanimous vote and may be stated as such in any articles or documents filed with the Secretary of State.

Section 7. ~~Section 6.6~~ Approval or Advice and Consent of the City Council. To the extent that these Bylaws refer to any approval by the City of Houston or ~~its Governing Body,~~ City Council or refer to advice and consent by the City of Houston or ~~its Governing Body,~~ City Council, such advice and consent shall be evidenced by a certified copy of a resolution, ordinance, or motion duly adopted by the City Council.

Section 8. ~~Section 6.7~~ Organizational Control. The City of Houston may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of

the Corporation (including the power to dissolve the Corporation), subject to any limitation on the impairment of contracts entered into by such Corporation.

Section 9. ~~Section 6.8~~ Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation shall automatically vest in the City of Houston without any further conveyance, transfer, or act of any kind whatsoever.

**BLACKLINE**

**Request Package No. \_\_\_\_\_ - 2009**

**CITY OF HOUSTON HIGHER EDUCATION FINANCE CORPORATION  
REGULATIONS AND APPLICATION FOR FINANCIAL PARTICIPATION**

**CITY OF HOUSTON  
HIGHER EDUCATION FINANCE CORPORATION (“Corporation”)  
REGULATIONS FOR RECEIVING & APPROVING APPLICATIONS  
FOR FINANCIAL PARTICIPATION**

These instructions and the attached material should be read carefully and thoroughly by each Applicant.

**Section 1. Definitions.** As used in these Regulations, the following words or terms shall have the meanings assigned to them in this Section, unless a contrary intent is clearly shown by the context:

“Act” – Chapters 53, 53A and 53B, Texas Education Code, as amended.

“Applicant” – the person, firm, partnership or corporation which makes an application for financial participation in a Project by seeking to have the Corporation issue Bonds or other obligations to provide a Project.

“Application” – the form of Application for Financial Participation approved by the Corporation, as amended from time to time.

“Application Fee” – the amount of \$2000 which is to be paid by each Applicant to the Corporation upon submission of the Application, which amount is non-refundable.

“Bonds” – obligations issued by the Corporation to finance the costs of a Project, whether in the form of notes, bonds or in some other form.

“Bond Counsel” – the firm recommended to serve as Bond Counsel to the Corporation in connection with an issue of Bonds and to perform the services specified in these Regulations. Bond Counsel must be approved by the Board.

“Board” – the Board of Directors of the Corporation.

“Closing Fee” – a fee of \$15,000 payable to the Corporation and any other actual costs as described ~~thein~~ in Section ~~65~~ 6 of the Regulations. The Application Fee shall be credited toward the \$15,000 Closing Fee.

“Code” – the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed and final regulations and revenue rulings issued or promulgated thereunder, as amended and in effect from time to time.

“Corporation” – City of Houston Higher Education Finance Corporation.

“General Counsel” – the firm of Vinson & Elkins LLP, which has been retained as General Counsel to the Corporation, or such other firm retained by the Corporation from time to time.

“Inducement Resolution” – a resolution adopted by the Board taking preliminary official action toward the issuance of tax-exempt Bonds in accordance with the provisions of the Act.

“Inducement and Indemnity Agreement” – as included in the Application on page ~~6~~6.

“Issuer” – City of Houston Higher Education Finance Corporation.

“Project” – the land, equipment, building, facilities, and improvements (any one or all) as further defined in Chapters 53 and 53A of the Act, or the guaranteed student loans to be purchased or made pursuant to Section 53B of the Act, to be financed in whole or in part by the Corporation through the issuance of the Bonds.

“Regulations” – these Regulations, which may be amended from time to time by the Board.

“Unit” – City of Houston, Texas.

**Section 2. Application.** An Applicant may request the Corporation to provide financial participation in a Project by filing the following with the Board:

- (a) a copy of a commitment letter from either (i) a bank or financial institution agreeing to purchase the Bonds; or (ii) an investment banker agreeing to market the Bonds;
- (b) five (5) originally executed copies of a completed Application and a completed Inducement and Indemnity Agreement as included in the Application; and
- (c) a check or money order, payable to the Corporation, in the amount of the Application Fee, which amount is non-refundable but shall be credited toward the Closing Fee.

The documents and fees required by this Section shall be filed with the Corporation by mailing or delivering the same to the Board of Directors, City of Houston Higher Education Finance Corporation, c/o Vinson & Elkins LLP, 1001 Fannin, Suite 2500, Houston, Texas 77002, Attention: Barron Wallace. Applicants are invited to contact the Corporation staff or General Counsel with any questions concerning the Application.

**Section 3. Inducement Resolution.** After the filing of the documents required in Section 2, the following procedures will be ordinarily followed by the Corporation:

- (a) The Board will review the Application and, if it finds there is reasonable certainty that (i) the Application, the Bonds, and the Project will qualify for final action by the Board in accordance with these Regulations; and (ii) the financing of the Project will be in furtherance of the public purposes of the Corporation as set forth in the Act, it will adopt an Inducement Resolution as provided by applicable law. In making the

findings set forth in this paragraph, the Board may request such information concerning the Applicant and the Project as it deems necessary and appropriate.

**Section 4. Final Approvals.** When all financing documents have been prepared and completed by the Applicant, they shall be filed with the Board for its approval. The Board will consider its final action pertaining to issuance of Bonds when requested to do so by the Applicant. Projects will be finally approved by the Board if it determines that all requirements for and prerequisites to final approval under these Regulations have been met and are in form and substance satisfactory to the Board.

**Section 5. Fees and Expenses.** Fees and out-of-pocket expenses shall be paid pursuant to the procedures set out below:

(a) Concurrently with the filing of an Application, the Applicant shall pay the Corporation the Application Fee, which amount is non-refundable, whether or not the Application is approved or the financing of the Project is accomplished.

(b) Concurrently with the issuance of any Bonds pursuant to an approved Application, the Applicant shall pay all professional fees, expenses and other costs relating to the Bonds, including but not limited to:

(i) the fees and expenses of Bond Counsel;

(ii) the fees and expenses of General Counsel;

(iii) the Attorney General's filing fee;

(iv) the fees and expenses of any financial advisor retained by the Corporation.

(v) any other costs associated with the transaction; and

(vi) the Closing Fee payable to the Corporation.

(c) The Corporation reserves the right at any time to change, increase, or reduce the fees and expenses payable under these Regulations and to make the same effective as to any Applicant whose Application is filed, or Bonds are delivered, subsequent to the date of such change.

(d) All fees imposed from time to time by the Corporation under these Regulations will be imposed in such amounts as will provide funds, as nearly as may be practicable, equal to that amount necessary to pay the administrative costs of conducting the business and affairs of the Corporation.

**Section 6. Amendments and Waivers.** The Board may amend these Regulations or waive any portion of these Regulations, as the Board deems is in the best interest of the



APPLICATION NO. \_\_\_\_\_  
(For HEFC use only)

Corporation, effective with respect to any Application filed subsequent to the effective date of any such amendment.

**CITY OF HOUSTON  
HIGHER EDUCATION FINANCE CORPORATION  
APPLICATION FOR FINANCIAL PARTICIPATION**

The undersigned, on behalf of the entity named as Applicant, hereby advises the City of Houston Higher Education Finance Corporation (the "Corporation"), that it is considering providing, expanding and/or improving educational facilities as described in Chapters 53 and 53A, Texas Education Code, as amended, or purchasing or making guaranteed student loans as described in Chapter 53B, Texas Education Code, as amended (Chapters 53, 53A and 53B, Texas Education Code, as amended, herein, the "Act"), all as more particularly described in the Application (the "Project") located in the City of Houston, Texas (the "City of Houston") or its environs, which Project will materially benefit the City and its populace. A contributing factor which would further induce Applicant to proceed with the Project would be a commitment and agreement by the Corporation to issue its revenue bonds pursuant to the Act, to finance and pay for all or a portion of the Project. In order to secure such commitment and agreement by the Corporation, Applicant hereby certifies as follows:

- (1) The Application for Financial Participation has been completed to the best of Applicant's ability, and the information contained therein and on any attachments thereto, represents a reasonably comprehensive outline of the Project and the financing requested in connection therewith.
- (2) Applicant will be further induced to proceed with the Project if the Corporation will adopt an Inducement Resolution as defined in the Regulations.
- (3) The Applicant should continue the Project to completion or abandon the Project by notice in writing to the Board. If the Applicant takes no action to implement the Project (pursuant to the Inducement Resolution) for a period of 12 months, the Corporation may, in its sole discretion, repeal the Inducement Resolution.
- (4) To the extent applicable, there shall be filed with the Board a pro forma copy of an official statement, prospectus or other offering memoranda, through the use of which the proposed Bonds are to be offered, sold or placed with any lender, purchaser or investor, which offering, sale or placement material shall contain prominent disclosure substantially to the effect that (i) neither the Corporation nor the Unit has undertaken to review or has assumed any responsibility for the matters contained therein except solely as to matters relating to a description of the Corporation and the Unit; (ii) all approvals, findings and determinations by the Corporation and the Unit, respectively, are and have been made by each for its own internal uses and purposes in performing its duties under the Act and these Regulations; (iii) notwithstanding their respective approvals of the Bonds and the Project, neither the Corporation nor the Unit, endorses or in any manner, directly

or indirectly, guarantees or promises to pay such obligations from any source of funds of either or guarantees, warrants or endorses the creditworthiness or credit standing of the Applicant or of any guarantor of such obligations; (iv) such Bonds are payable solely from the funds and secured solely by property furnished and to be furnished and provided by the Applicant and any guarantor and/or letter of credit bank and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the Corporation, the Unit, the State of Texas or any of its political subdivisions; and (v) by its issuance thereof, the Corporation does not in any manner, directly or indirectly, guarantee, warrant or endorse the creditworthiness or credit standing of the Applicant or of any guarantor of such obligations or the investment quality or value of the same.

- (5) The Applicant will (a) pay all Project costs which are not or cannot be paid or reimbursed from the proceeds of bonds or other evidences of indebtedness issued by the Corporation to provide funds to finance the Project and (b) will indemnify and hold harmless the Issuer and its directors against all losses, costs, damages, expenses and liabilities of whatsoever nature (including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) incurred by or asserted against any such indemnified party directly or indirectly resulting from, arising out of or related to the issuance, offering, sale, or delivery of the Bonds, or the design, construction, installation, operation, use, occupancy, maintenance, ownership or management of the Project, whether or not any such indemnified party is alleged or found to have been negligent in connection therewith.

Having read and complied with the Regulations, Applicant hereby requests that the Corporation consider this Application and adopt an Inducement Resolution, as required by the Act, on behalf of Applicant and herewith tenders the Application Fee as defined in the Regulations.

The undersigned warrants that he or she is properly authorized to submit and execute this Application on behalf of Applicant.

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name of Applicant

By: \_\_\_\_\_  
Authorized Officer or Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Presently Estimated  
Amount of Project  
Financing Requested**

APPLICATION NO. \_\_\_\_\_  
(For HEFC use only)

\$ \_\_\_\_\_

**Please provide the following information, attaching additional sheets hereto if necessary. Capitalized terms used herein but not defined herein shall have the same meaning ascribed to them in the Regulations.**

**1. General Information Concerning Applicant:**

- a. Legal name, state of incorporation (or other form of organization or association), employer identification number, address and telephone number of Applicant, along with contact person for Application.
- b. Is Applicant a nonprofit corporation (a "Nonprofit Applicant")? If so, please attach determination letter from the Internal Revenue Service to this effect.
- c. Name, address and telephone number of all parties involved. Please include counsel for Applicant (may or may not be Bond Counsel).
- d. A brief statement of the history and type of business in which the Applicant engages.

**2. Description of Project:**

- a. Please describe the Project, state the total cost of the Project and the amount of financing applied for along with an estimate of sources and uses of proposed bond proceeds.

**3. Financial Arrangements:**

- a. Attach letter from either (i) a qualified bank or financial institution agreeing to purchase the bonds, or (ii) an investment banker agreeing to market the bonds; summarize the financing arrangements for the Project as planned as of this date. If Applicant has a credit rating, please state the rating and the agency issuing such rating.

- b. Provide the following information regarding outstanding tax-exempt financing used to finance the Project or any other facilities or guaranteed student loans used by Applicant or Related Persons wholly or partly within the City of Houston. (Date of Issue, Amount of Issue, Amount Outstanding as of Estimated Date of Issue of the Bonds).

**5.4. Financial Statements:**

- a. Provide Applicant's and each guarantor's audited financial statements for each of the three preceding fiscal years, as available.

**6.5. For Projects which are educational facilities as defined in Section 53 and 53A of the Act:**

a. Ownership of the Project site

- 1. If the Project site is owned by the Applicant, please provide date of purchase (i.e., closing date), purchased from, purchased price, amount of mortgage, and mortgagee.
- 2. If the Project site is leased by the Applicant, please provide lessor, date of lease, and terms. In addition, please state if there is any option to purchase and give date option agreement signed with owner, amount of down payment or option payment, purchase price, estimated purchase date (i.e., closing date).
- 3. If any part of the Project will be leased to a tenant other than Applicant, please indicate: (i) total square footage of Project, and (ii) amount to be leased to each tenant (if more than 10% in space or in value):

b. Project Schedule:

- 1. Please list the anticipated project schedule and dates, include major activities such as site clearance, foundation, building construction, and completion.

2. What estimated costs will have been paid or incurred on the Project prior to the approximate date the Corporation will adopt the Inducement Resolution?

c. Neighborhood/Community Issues:

1. Is the project located within a residential area? If yes, have you contacted the neighborhood civic organizations to discuss the impact of the Project on the surrounding neighborhoods?
2. Have you contacted anyone else to assess the impact of the Project on the surrounding neighborhoods?
3. How will the Project address the requirements of the Act?

d. Deed Restrictions

1. If there are deed restrictions with respect to the Project site that need to be disclosed, provide an affidavit signed by an authorized representative of Applicant certifying that no provision of the deed restrictions, if any, will be violated by the Project; and that the proposed project shall comply with applicable City planning and development ordinances; and

Affidavit Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

2. Provide copies of the deed restrictions, if any, for the property or properties on which the Project will be constructed together with a certificate of Applicant to the effect that such deed restrictions constitute the only deed restrictions applicable to the Project site; and

Copy(s) Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

3. Provide a statement from the lender, if only one lender is to be involved, or from the lead lender, if a consortium of lenders is to be involved, affirmatively stating that to the best of its knowledge no deed restriction violations will occur as a result of approving the Project.

Statement Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

de. Residential Displacement that will occur as a result of the Project

1. Will the Project cause any residential displacement?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If it is determined that construction of the Project requires relocation of residents living at the site, or that ~~Construction~~construction of the Project be the principal determining factor necessitating relocation of residents living in the immediate vicinity of the site. — (“Principal determining factor” means that if the Project were not constructed, those persons living in the immediate vicinity of the Project site would not have to be relocated), Applicant must provide a plan for relocation assistance. Relocation assistance shall include but not necessarily be limited to a commitment to fund at least one-half of the cost to the displaced residents of finding comparable housing in a comparable area.

Plan Provided: \_\_\_\_\_ Yes \_\_\_\_\_ No

7.6. For Projects which are guaranteed student loans as defined in Section 53B of the Act:

- a. How will the Project address the requirements of the Act?
- b. Are the guaranteed student loans which comprise the Project guaranteed by the Texas Guaranteed Student Loan Corporation?

\_\_\_\_\_ Yes \_\_\_\_\_ No.

If yes, provide documentation of such guarantee.

- c. Are the guaranteed student loans which comprise the Project executed by or on behalf of students who are residents of this state or have been admitted to attend an accredited institution within this state?

\_\_\_\_\_ Yes \_\_\_\_\_ No.

If yes, provide documentation of the same.